



## **ATCO Electric Ltd.**

**Decision on Preliminary Question  
Application for Review of Decision 27062-D01-2023  
2023-2025 General Tariff Application and  
Negotiated Settlement Agreement**

**September 8, 2023**

**Alberta Utilities Commission**

Decision 28241-D01-2023

ATCO Electric Ltd.

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Application for Review of Decision 27062-D01-2023

2023-2025 General Tariff Application and

Negotiated Settlement Agreement

Proceeding 28241

Application 28241-A001

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## **1 Decision summary**

1. In this decision, the Alberta Utilities Commission dismisses an application by ATCO Electric Ltd. (ATCO) to review Commission Decision 27062-D01-2023,<sup>1</sup> (the Decision) concerning ATCO’s 2023-2025 general tariff application (GTA). ATCO’s submissions failed to persuade the Commission that there are grounds to review the Decision, as required under Section 5(1)(a) of Rule 016: *Review of Commission Decisions*.

2. In this decision, the members of the Commission panel who authored Decision 27062-D01-2023 are referred to as the “hearing panel” and the members of the Commission panel considering the review application are referred to as the “review panel.”

## **2 Summary of Section 4.3 of Decision 27062-D01-2023**

3. ATCO is a transmission facility owner that provides regulated electric transmission service in Alberta. ATCO recovers the costs of providing electric transmission service through its transmission tariff, which must be approved by the Commission. Once approved, ATCO recovers its tariff amounts from Alberta ratepayers.

4. The Decision concerns ATCO’s tariff application for the 2023-2025 period. The grounds in ATCO’s review application are limited to the hearing panel’s findings in Section 4.3 of the Decision. The review panel provides the following brief summary of the issues in Section 4.3 for context.

5. The Municipality of Jasper, Jasper National Park, and the surrounding area (Jasper) received electricity from the Jasper Palisades Power Plant, which ATCO owned, rather than from the provincial power grid. In 2018, the Commission approved an application filed by ATCO and AltaLink to construct and operate a transmission line that would connect Jasper to the provincial power grid. In 2019, the Commission authorized ATCO to discontinue operation of the Jasper Palisades Power Plant, and to decommission and salvage it. At the time of ATCO’s last depreciation study (filed in its 2020-2022 GTA), it anticipated that 2020 would be the year of final retirement for all of the assets comprising the Jasper Palisades Power Plant. Accordingly, commencing in 2021, ATCO set a depreciation rate for all Jasper Palisades Power Plant asset

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<sup>1</sup> Decision 27062-D01-2023: ATCO Electric Ltd., 2023-2025 General Tariff Application and Negotiated Settlement Agreement, Proceeding 27062, May 5, 2023.

accounts to zero per cent, notwithstanding that ATCO intended to continue to record an annual amortization of reserve differences true up amount over the 2023-2025 test period.<sup>2</sup>

6. ATCO proceeded to prepare a sales offering for the Jasper Palisades Power Plant, as required under the *Isolated Generating Unit and Customer Choice Regulation*. While doing so, ATCO discovered it had recorded switchgear assets that were part of the Jasper Palisades Power Plant in incorrect depreciable transmission asset accounts, instead of the correct power plant asset accounts. This meant that, from 2009 onwards, the switchgear assets were being depreciated at incorrect depreciation rates reflecting longer-lived transmission assets. Had ATCO placed the switchgear assets in the correct account from the outset, they would have been fully depreciated by the end of 2020.

7. In 2021, ATCO transferred the historical cost and accumulated depreciation balances for the switchgear assets from the four incorrect transmission and general plant accounts to the correct accounts.

8. ATCO requested, in its tariff application for the 2023-2025 period, that the hearing panel approve a one-time \$7.5 million adjustment to its depreciation expense to correct the accounting error. ATCO proposed to recover the amount from ratepayers in 2023.

9. The hearing panel denied ATCO's request. The hearing panel found that ATCO had failed to persuade them that it was just and reasonable, in the circumstances of the case, to grant the request.

### **3 Review application**

10. ATCO asserted that the hearing panel made five errors of fact, or mixed fact and law where the legal principle is not readily extricable, in relation to its findings in Section 4.3 of the Decision.

11. The Consumers' Coalition of Alberta (CCA) and The City of Calgary (Calgary) opposed ATCO's review application.

12. The review panel provides its findings in relation to each alleged error in Section 5 of this decision.

### **4 The Commission's review process**

13. The Commission's authority to review its own decisions is discretionary and is found in Section 10 of the *Alberta Utilities Commission Act*. Rule 016 sets out the process for considering an application for review.

14. The review process has two stages. In the first stage, a review panel decides if there are grounds to review the original decision (the preliminary question). If the review panel decides to

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<sup>2</sup> Decision 27062-D01-2023, paragraphs 63-65.

review the decision, it moves to the second stage where it decides whether to confirm, vary, or rescind the original decision (the variance question).

15. In this decision, the review panel has decided the preliminary question.

16. Under Rule 016 a review panel can review Commission decisions where a review applicant demonstrates that the Commission erred in fact or mixed fact and law. In its review application, ATCO relied on Section 5(1)(a) of Rule 016, which states:

5(1) The Commission may grant an application for review of a decision, in whole or in part, where it determines that the review applicant has demonstrated:

(a) The Commission made an error of fact, or mixed fact and law where the legal principle is not readily extricable, which is material to the decision and exists on a balance of probabilities.

17. Errors of mixed fact and law involve the application of a legal standard to a set of facts, such as an assessment of whether the facts satisfy the applicable legal standard.<sup>3</sup>

## 5 Review panel findings

18. In the paragraphs that follow, the review panel examines each of the five errors asserted by ATCO in support of its request for a review of the Decision.

### 5.1 Whether the hearing panel erred in mixed fact and law by concluding it is not just and reasonable to allow recovery of the \$7.5 million adjustment

19. ATCO argued that the hearing panel erred in applying the just and reasonable standard to facts and policy considerations arising from honest mistakes generally and the accounting error specifically. As one example, ATCO alleged that the hearing panel focused on the fact that ATCO made a mistake, but failed to undertake a balanced assessment of competing facts and policy considerations. In reply argument, ATCO stated that the hearing panel did not consider the impacts or fairness to the utility. ATCO argued that the exercise of discretion in the adjudicative context will always give rise to a question of mixed fact and law, and therefore that this ground is within the scope of Rule 016.

20. The CCA submitted that ATCO's disagreement with the hearing panel's findings does not amount to a reviewable error. Calgary similarly stated that ATCO is re-arguing its case and asking for different weight to be put to evidence, which is not a reviewable ground of error.<sup>4</sup>

21. The Commission finds ATCO's ground to be outside the scope of Section 5(1)(a) of Rule 016.

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<sup>3</sup> *Alberta (Workers' Compensation Board) v Appeals Commission*, 2005 ABCA 276, paragraphs 21-22.

<sup>4</sup> Decision 26757-D01-2021: FortisAlberta Inc., Decision on Application for Review and Variance of Decision 25916-D01-2021, 2022 Phase II Distribution Tariff Application, Proceeding 26757, December 9, 2021, paragraph 40.

22. The review panel appreciates that the general language of Section 5(1)(a) permits a review applicant to raise grounds of mixed fact and law. However, the Commission has previously considered the proper role of a review panel and found a review panel's task is not to retry an application based upon its own interpretation of the evidence nor is it to second guess the weight assigned by a hearing panel to various pieces of evidence. This is because the principles of finality and certainty are engaged in review application proceedings. Finality is an important principle in administrative decision making because it provides certainty to those parties who participated in or are impacted by the proceeding, and to all stakeholders in the regulatory process more generally.<sup>5</sup> The review panel agrees with, and finds no compelling reason to depart from, this approach.

23. In Section 4.3 of the Decision, the hearing panel was engaged in setting ATCO's just and reasonable rates. The hearing panel considered evidence and heard argument in respect of ATCO's proposed depreciation adjustment of \$7.5 million. The hearing panel exercised its discretion under the legislative scheme in reaching its conclusion given the unique factual and policy considerations specifically at issue in this case. The hearing panel's consideration of whether ATCO had a reasonable opportunity to recover its prudently incurred costs and expenses associated with the switchgear assets, is one example demonstrating that the hearing panel did not ignore the impact and fairness to the utility in its analysis. Overall, the review panel finds that ATCO is asking the review panel to retry the 2023-2025 GTA and assign different weight to the evidence. This is contrary to the proper role of a review panel and the principles that apply to the Commission in considering review applications.

24. ATCO referenced an Ontario Energy Board (OEB) decision,<sup>6</sup> which concerned a utility's request to recover costs that arose due to an accounting error, as an example that demonstrates the proper balancing of facts and policy considerations in applying the just and reasonable standard. The CCA questioned the comparability of the facts in the OEB decision to the facts before the hearing panel. Calgary noted that the OEB decision did not address the duration of the accounting error, or the utility's opportunities to correct the error, both of which the hearing panel expressly addressed in the instant case.

25. In any event, the review panel finds it unnecessary to determine the similarities or differences in factual and policy matters as between the two decisions. The review panel notes that the OEB decision was not placed before the hearing panel and that ATCO provided no reasons which may have prevented it from doing so. Accordingly, the review panel finds ATCO's contention that the hearing panel should have taken a similar approach to that of the OEB in the decision in question constitutes new facts, argument, and/or precedent from another jurisdiction that was available at the time of the original proceeding, and could have been

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<sup>5</sup> See, for example, Decision 27403-D01-2022: City of Calgary, Decision on Application for Review of Ruling on Confidentiality in Proceeding 26615, October 27, 2022, paragraph 23 citing Decision 2012-124: AltaLink Management Ltd. and EPCOR Distribution & Transmission Inc., Decision on Request for Review and Variance of AUC Decision 2011-436, Proceeding 1592, May 14, 2012, paragraph 31.

<sup>6</sup> Ontario Energy Board (OEB) Decision EB-2004-0004, April 19, 2004.

submitted at the time. The review process is not intended to provide a second opportunity for parties to express concerns that they did not raise in the original proceeding.<sup>7</sup>

26. For the above reasons, the review panel finds that ATCO's first ground of review is outside the scope of Section 5(1)(a) of Rule 016. The review panel is not persuaded that there is an error of fact, or mixed fact and law, which is material to the decision and exists on a balance of probabilities, and dismisses ATCO's first ground of review on this basis.

**5.2 Whether the hearing panel erred in fact, or mixed fact and law, by concluding that ATCO had “forgone” the reasonable opportunity to recover the \$7.5 million adjustment in the 2023-2025 tariff**

27. ATCO submitted that the hearing panel erred in fact, or mixed fact and law, in conflating ATCO's honest mistake with ATCO forgoing a reasonable opportunity under Section 122(1)(a) of the *Electric Utilities Act* to recover the costs from 2009-2020.

28. ATCO pointed to the hearing panel's statement in paragraph 90 of the Decision, which uses the language “forgone reasonable opportunity” as being factually inaccurate. Paragraph 90 states:

90. When viewed in this context, the error that resulted in the \$7.5 million in undepreciated capital costs associated with the switchgear assets can more fairly be characterized as ATCO Electric's forgone reasonable opportunity to recover its prudently incurred investment related to the switchgear assets under its approved tariff from 2009 to 2020.

ATCO submitted that because its tariffs from 2009 to 2020 were based on ATCO's mistake of capitalizing the switchgear assets to the incorrect accounts, ATCO's tariffs did not and could not provide a reasonable opportunity for ATCO to recover the entirety of the switchgear asset costs over this time frame. Therefore, it did not forgo this opportunity. In addition, ATCO argued that the hearing panel erred in mixed fact and law by applying the “reasonable opportunity” only to the 2009-2020 timeframe, rather than the 2023-2025 timeframe. ATCO argued that errors related to its investments in the switchgear assets are recoverable when found, particularly given that the error related to a previously approved prudent investment.

29. The CCA submitted that a “reasonable opportunity” under Section 122 of the *Electric Utilities Act* to recover prudently incurred costs is not the same thing as a guarantee of cost recovery in any and all circumstances. In the CCA's view, if ATCO fails to properly seek recovery of prudently incurred costs before the assets are removed from service, then the reasonable opportunity is forgone. Calgary noted that ATCO has the onus under the *Electric Utilities Act* to bring its tariff application forward for approval. Calgary argued that ATCO controls all the information, and that it is not the Commission's responsibility to read ATCO's mind and assess whether ATCO has made any errors in its application or records. In Calgary's view, it is ATCO's responsibility insofar as it fails its onus.

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<sup>7</sup> See, for example, Decision 26888-D01-2021: Landowners near the approved route for Transmission Line 459L, Decision on Preliminary Question Application for Review of Decision 26171-D01-2021, AltaLink Management Ltd., Provost to Edgerton Transmission Development, Proceeding 26888, December 16, 2021, paragraph 20.



30. The hearing panel was clearly live to the reasonable opportunity requirement under the *Electric Utilities Act*, and whether ATCO had a reasonable opportunity to recover its capital investment in the switchgear assets for the 2009-2020 period. ATCO and interveners provided argument on whether ATCO already had a reasonable opportunity to recover its capital investment from 2009 to 2020 and whether an additional reasonable opportunity for ATCO to recover the \$7.5 million adjustment during the 2023-2025 period was required. The hearing panel directly addressed these issues, and provided reasons for reaching its conclusions, in paragraphs 88-89 of the Decision. Despite the hearing panel finding that ATCO had a reasonable opportunity to recover its capital investment in the switchgear assets under its tariff from 2009-2020, the hearing panel continued to assess whether it was just and reasonable to include the costs at issue in ATCO's 2023-2025 tariff.<sup>8</sup> The hearing panel was ultimately unpersuaded that it was just and reasonable to do so.

31. The review panel appreciates that ATCO disagrees with the hearing panel's conclusion and desires a different result. However, the Commission has consistently held that a review panel's task is not to retry an application based upon its own interpretation of the evidence, nor is it to second guess the weight assigned by a hearing panel to various pieces of evidence.

32. In reply argument, ATCO submitted that the clear subtext of the hearing panel's findings is that the hearing panel intended to punish ATCO, rather than set just and reasonable rates. The review panel does not find this argument compelling. The Commission's authority is limited to setting just and reasonable tariffs for a utility; this means that the Commission cannot approve a tariff that incorporates applied-for costs that are determined not to be just and reasonable. The hearing panel's reasons in Section 4.3 of the Decision disclose a robust consideration of facts and policy that the review panel considers relevant to the Commission's mandate to set just and reasonable rates.

33. Given the above, the review panel is not persuaded that there is an error of fact, or mixed fact and law, which is material to the decision and exists on a balance of probabilities. Therefore, the review panel dismisses ATCO's second ground on this basis.

### **5.3 Whether the hearing panel erred in fact by concluding that ATCO did not apply sufficient diligence in identifying the accounting error sooner**

34. ATCO submitted that its accounting error arose from an honest mistake. ATCO alleged that the hearing panel erred in fact when it found that ATCO made a second error, in 2016, when ATCO did not discover the accounting error in response to a specific Commission direction in Decision 20272-D01-2016.<sup>9</sup>

35. The hearing panel's findings regarding the 2016 direction, in part, are as follows:

85. In so far as the existence of reasonable opportunities for ATCO Electric to discover and correct its mistake is concerned, it is noteworthy that, in 2016 in Decision 20272-D01-2016, the Commission directed ATCO Electric to confirm that its then

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<sup>8</sup> Decision 27062-D01-2023, paragraphs 91 – 106.

<sup>9</sup> Decision 20272-D01-2016: ATCO Electric Ltd., 2015-2017 Transmission General Tariff Application, Proceeding 20272, August 22, 2016.

calculated accumulated depreciation balances for the Jasper Palisades Power Plant were accurate. ...

660. The Commission accepts ATCO Electric's revised year of final retirement of 2018 and net negative salvage estimates for Jasper Palisades generation assets as being related to the energization of the Jasper transmission interconnection thereby eliminating the need for the Jasper Palisades isolated generation plant.

661. However, as part of ATCO Electric's compliance filing, **the Commission requires confirmation that ATCO Electric's calculated accumulated depreciation balances related to life and net salvage as of December 2017 are correct in that approximately \$12.7 million in life and net salvage remains to be recovered in the year 2018 and beyond. ATCO Electric is directed to provide the requested confirmation and explain why the unrecovered balance is so large. ATCO Electric is also directed to describe the proposed method and period of recovery of the \$12.7 million.** [emphasis added]

86. Despite being required to verify its unrecovered balance regarding all of the Jasper Palisades Power Plant assets, ATCO Electric did not disclose any error with respect to the (misclassified) switchgear assets when it responded to this Commission direction in Proceeding 22050. There, ATCO Electric did disclose an error related to the balance of unrecovered investment, but that error did not relate to the switchgear assets at issue in this proceeding. ...

...

87. Had ATCO Electric, during the course of its response to the Commission direction, uncovered the error and thus properly verified the remaining unrecovered balances for all its Jasper Palisades isolated generation assets, including the switchgear assets, the matter would have been placed squarely before the Commission much earlier and under a different set of factual circumstances.

36. ATCO argued that the 2016 direction did not specifically direct ATCO to undertake a physical fixed asset verification check, which is how ATCO ultimately identified the error at the time of sale. Therefore, ATCO argued, the hearing panel erred in concluding that ATCO, having failed to conduct such a check, did not apply sufficient or reasonable diligence, or otherwise failed to comply with the 2016 direction. ATCO submitted that the hearing panel placed considerable weight on this factual finding, and therefore that a correction could lead the Commission to materially vary the decision.

37. The CCA submitted that the 2016 direction was clear, and that ATCO had an opportunity at that time to identify the error and apply to the Commission to correct it prior to the assets being physically removed from service. The CCA argued that the Commission's expectation in making the direction was that the accumulated depreciation values would be confirmed, and that the onus was on ATCO to exercise its judgement as how to best comply. Calgary submitted that the direction clearly required ATCO to confirm that "calculated accumulated depreciation balances related to life and net salvage as of December 2017 are correct" which required ATCO to ensure its balances in all relevant assets were correct, and that assets were properly placed in the right accounts.

38. The review panel observes that the hearing panel regarded the 2016 direction as a targeted additional opportunity for ATCO to identify and correct the (at that point, still undetected) error that existed during a 12 year continuous period, as the 2016 direction was focused on the Jasper Palisade Power Plant assets. The hearing panel made no statement that ATCO did not “comply with” the 2016 direction. In addition, the hearing panel found that reasonable opportunities existed for ATCO to discover the error over a 12 year continuous period.

39. ATCO also argued that the switchgear assets were in Account 353 with thousands of assets, demonstrating that the accounting error was not readily discoverable. The CCA responded that the size of the account does not alter the fact that ATCO was accorded a reasonable opportunity to recover its prudently incurred costs but failed to do so.

40. ATCO made this same argument to the hearing panel.<sup>10</sup> The review panel observes, in this regard, that the 2016 direction related solely to Jasper Palisades Isolated Generation Plant assets. In any event, the review panel’s task is not to retry ATCO’s 2023-2025 GTA based upon its own interpretation of the evidence nor is it to second guess the weight assigned by the hearing panel to various pieces of evidence.

41. Given the above, the review panel is not persuaded that there is an error of fact, or mixed fact and law, which is material to the decision and exists on a balance of probabilities. Accordingly, the review panel dismisses ATCO’s third ground on this basis.

#### **5.4 Whether the hearing panel erred in fact by finding that the proposed \$7.5 million adjustment was inconsistent with the purpose of the amortization of reserve differences account**

42. In Proceeding 27062, ATCO argued that its proposed depreciation adjustment would be consistent with the amortization reserve for differences (ARD) mechanism. The hearing panel disagreed, finding that ATCO’s request was inconsistent with the purpose of the ARD mechanism in the specific circumstances of the case.

43. ATCO, in its review application, submitted that the hearing panel made two factual errors.

44. First, ATCO submitted that an ARD refunds to, or collects from customers any surpluses or shortfalls of accumulated depreciation over the average remaining life of an asset account. ATCO submitted that evidence filed by its independent witness Larry Kennedy in Proceeding 27062 “clearly establishes” that one type of National Association of Regulatory Utility Commissioners accounting entry is a transfer of assets. Therefore, ATCO submitted, the hearing panel erred in finding that ARD is restricted to true-up of past “mis-estimates.”

45. The hearing panel’s reasons, in part, are as follows:

97. The amortization of reserve differences is a mechanism approved by the Commission that, in general terms, is used by utilities to recover no more or no less than their full capital investment in utility assets. The mechanism trues up differences between

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<sup>10</sup> See, for example, Transcript Volume 2, pages 156-157.

estimates of depreciation parameters, such as estimated versus actual services lives of assets, among other things. This implies that the depreciation parameter elements (used by the utility to determine depreciation rates) are interim until better information becomes available. In the case before the Commission, however, ATCO Electric seeks a permanent true-up of capital costs that is unrelated to past mis-estimates of depreciation parameters. (footnotes omitted)

98. The Commission finds that ATCO Electric’s request is inconsistent with the purpose of the amortization of reserve differences mechanism, in the specific circumstances of this case and for reasons already discussed. ...

46. The review panel is not persuaded that the hearing panel’s findings extend to a finding that a transfer of assets more generally, or in different circumstances, is not permitted under the ARD mechanism. Rather, the hearing panel’s findings are limited to the specific factual circumstances before it, which include the discovery of a depreciation misclassification error in respect of an asset that is no longer in service. As support for this conclusion, the review panel notes that in an earlier part of Section 4.3 of the Decision, the hearing panel emphasized that its analysis may have been quite different if the accounting error at issue had been discovered earlier:

87. Had ATCO Electric, during the course of its response to the Commission direction, uncovered the error and thus properly verified the remaining unrecovered balances for all its Jasper Palisades isolated generation assets, including the switchgear assets, the matter would have been placed squarely before the Commission much earlier and under a different set of factual circumstances.

Further, the hearing panel appears to have taken care to qualify its findings in paragraph 98 of the Decision, using language such as “in the specific circumstances of this case and for the reasons already discussed.”

47. Considering the scope of the hearing panel’s findings in relation to the ARD, the review panel finds that ATCO is asking the review panel to retry the 2023-2025 GTA based upon its own interpretation of the evidence and second guess the weight assigned by the hearing panel to various pieces of evidence. The review panel declines to do so.

48. Second, in paragraph 98 of the Decision, the hearing panel stated “In particular, the Commission rejects ATCO Electric’s suggestion that this mechanism, in effect, confers a specific entitlement that provides it with an indemnity for its errors related to mass property accounting and depreciation practices.” ATCO submitted in its review application that, contrary to this statement in paragraph 98 of the Decision, it did not argue or state that the ARD “conferred a specific entitlement that provides it with an indemnity for its errors.” Rather, ATCO argued, its position in Proceeding 27062 was that in the absence of its forthcoming application under Section 20 of the *Isolated Generating Units and Customer Choice Regulation*, where the undepreciated capital cost for the assets could be recovered from the Balancing Pool, the recalculation of ARD at the time of the next depreciation study would be another “opportunity” to true up the deficiency in accumulated depreciation as a result of the misclassification. ATCO submitted that the hearing panel’s characterization of ATCO’s requested relief is an error of fact.

49. Calgary responded that the hearing panel clearly apprehended ATCO's position to be that its proposed depreciation adjustment conformed with the ARD mechanism. Calgary submitted that the effect of ATCO's request was to seek indemnity from its customers (i.e., ratepayers), as it had no other sources from which to recover these costs. The CCA argued that the ARD is not a catch all account that washes away all mistakes and errors, and that it was clear that ATCO intended to apply the ARD mechanism as an indemnity.

50. The review panel notes that the hearing panel's statement in paragraph 98 includes the qualifiers "suggestion" and "in effect." This, in concert with the context of the statement, shows that the hearing panel is describing ATCO's request in the hearing panel's own words, including the hearing panel's understanding of the practical effect of accepting ATCO's request.

51. In the review panel's view, the hearing panel understood that ATCO, as a general practice, updates the ARD true-up at the time of a new depreciation study.<sup>11</sup> The review panel considers this general ARD true-up practice to be a separate issue from ATCO's argument in Proceeding 27062 that the \$7.5 million depreciation adjustment to the ARD was appropriate in the circumstances.

52. Given the above, the review panel is not persuaded that there is an error of fact, or mixed fact and law, which is material to the decision and exists on a balance of probabilities. Accordingly, the review panel dismisses ATCO's fourth ground on this basis.

### **5.5 Whether the hearing panel erred in fact, or mixed fact and law, in concluding that the "correct undepreciated balance" of the switchgear assets should be \$0.**

53. ATCO submitted that the hearing panel made an error of fact, or mixed fact and law, at paragraph 2(iii) of the Decision (under the heading titled "Decision summary"), when the hearing panel stated:

2. ... Of the three issues that were not part of the NSA, the Commission has:

...  
(iii) Denied ATCO Electric's request to collect \$7.5 million in depreciation related to the Jasper Palisades amounts that were incorrectly accounted for, and determined that the correct undepreciated balance in relation to the Jasper Palisades switchgear assets should be \$0.

ATCO stated it was undisputed that the original cost of the switchgear assets was \$10.6 million and as at December 31, 2022 had an undepreciated cost of \$7.5 million. Therefore, ATCO argued, there was no factual basis for the hearing panel to conclude that the "correct undepreciated balance" should be \$0 for purposes of Section 20 of the *Isolated Generation Units and Customer Choice Regulation* or otherwise. ATCO submitted that correction of this error could lead the Commission to materially vary the Decision.

<sup>11</sup> See, for example, Decision 27062-D01-2023, paragraph 74: "74. As noted earlier, ATCO Electric stated that at the time of its next depreciation study, it will update the amortization of reserve differences true-up to incorporate any additional information available with respect to remediation and reclamation of the entire Jasper Palisades isolated generation site. This will result in a final true-up for the amortization of reserve differences for all Jasper Palisades isolated generation facilities and will occur after reclamation and remediation is complete, forecast as 2030."

54. The CCA submitted that it is unclear what the alleged error is; the correct undepreciated cost is \$0, as this is the remaining balance the hearing panel approved for collection from ratepayers. Calgary responded that the hearing panel was confirming its overall finding to deny the costs for the switchgear assets by stating the account balance amount should be \$0 for rate making purposes.

55. In paragraph 107 of the Decision, the hearing panel found that the \$7.5 million of undepreciated capital cost connected with the switchgear assets was a permanent capital disallowance and was not recoverable from current ratepayers. Then, the hearing panel directed ATCO to remove the historical cost and accumulated depreciation related to these assets from the accounting records of its regulated utility assets. The review panel agrees with the CCA that the statement in paragraph 2(iii) of the Decision, namely, that the correct undepreciated cost should be \$0, reflects the hearing panel's findings that no further undepreciated costs connected with the switchgear assets would be recoverable from ratepayers from 2023 onwards.

56. Given the above, the review panel is not persuaded that there is an error of fact, or mixed fact and law, which is material to the decision and exists on a balance of probabilities. Therefore, the review panel dismisses ATCO's fifth ground on this basis.

## **6 Decision**

57. In answering the preliminary question, the review panel finds that ATCO has not met the requirements for a review of Decision 27062-D01-2023 and the application for review is dismissed.

Dated on September 8, 2023.

### **Alberta Utilities Commission**

*(original signed by)*

Dennis Frehlich  
Panel Chair

*(original signed by)*

Bohdan (Don) Romaniuk  
Acting Commission Member